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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 JOHNNY D. TURNER,

12 Plaintiff,

13 v.

14 PIERCE COUNTY (SHERRIFF P.
15 PORTER), *et al*,

16 Defendants.

Case No. C08-5464FDB-KLS

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS

Noted for November 28, 2008

17 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
18 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983 and
19 an application to proceed *in forma pauperis*. To file a complaint and initiate legal proceedings, plaintiff
20 must pay a filing fee of \$350.00 or file a proper application to proceed *in forma pauperis*. Because
21 plaintiff has failed to respond to the Court's order to show cause, the undersigned recommends the Court
22 deny his application.

23 DISCUSSION

24 The Court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper
25 affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an
26 application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,
27 375 U.S. 845 (1963).

28 On July 22, 2008, the Clerk received plaintiff's complaint and application to proceed *in forma*

1 *pauperis*. (Dkt. #1). On July 23, 2008, the Clerk sent plaintiff a letter informing him that he had failed to
2 provide a copy of his prison trust account statement showing transactions for the past six months, and that
3 he had provided an insufficient number of copies of the complaint for service. (Dkt. #2). The Clerk also
4 informed plaintiff that if he did not respond to the letter by August 22, 2008, this action could be subject
5 to dismissal.

6 On September 8, 2008, because plaintiff had not filed any response to the Clerk's letter, the Court
7 issued an order noting that pursuant to 28 U.S.C. § 1915(a)(2), plaintiff was required to submit a prison
8 account statement showing the balance and activity of his account for the six-month period immediately
9 preceding the filing of his complaint. (Dkt. #4). The undersigned informed plaintiff that since he had not
10 filed a copy of his prison account statement as required, his eligibility for *in forma pauperis* status could
11 not be determined. The undersigned further noted that while plaintiff stated in his application that he had
12 \$1,100.00 in a checking or savings account, stating further that "But Moneys [sic] a Sucured [sic] Loan,"
13 it was unclear what he meant by this or whether he had access to those funds.

14 The undersigned gave plaintiff until October 8, 2008, in which to cure these deficiencies, by filing
15 a copy of his prison trust account statement, and a written response explaining the nature and status of the
16 \$1,100.00 he had in the above-noted checking or savings account and whether he had access to those
17 funds, and by providing the Court with five copies of the complaint for service on the named defendants.
18 Plaintiff was warned that failure to cure these deficiencies by the above date would be deemed a failure to
19 properly prosecute this matter and the undersigned would recommend dismissal of this matter. To date,
20 however, plaintiff has failed to respond to the undersigned's order.

21 CONCLUSION

22 Because plaintiff has failed to respond to the undersigned's order to show cause regarding his
23 application to proceed *in forma pauperis*, the undersigned recommends the Court dismiss plaintiff's
24 complaint unless he pays the required \$350.00 filing fee **within thirty (30) days** of the Court's order.

25 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 72(b),
26 the parties shall have ten (10) days from service of this Report and Recommendation to file written
27 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
28 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit

1 imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this matter for consideration on **November**
2 **28, 2008**, as noted in the caption.

3 Dated this 3rd day of November, 2008.

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7 Karen L. Strombom
8 United States Magistrate Judge
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